

BEFORE THE  
**Federal Communications Commission**  
WASHINGTON, DC 20554

In the Matter of

Revision of the Commission's Rules To  
Ensure Compatibility With Enhanced 911  
Emergency Calling Systems

)  
) CC Docket No. 94-102  
) RM-8143  
)  
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**PETITION FOR RECONSIDERATION  
PRIMECO PERSONAL COMMUNICATIONS, L.P.**

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September 3, 1996

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**PETITION FOR RECONSIDERATION OF  
PRIMECO PERSONAL COMMUNICATIONS, L.P.**

PrimeCo Personal Communications, L.P. ("PrimeCo"), an A and B Block  
broadband PCS licensee,<sup>1</sup> hereby files this petition for reconsideration of the above-  
captioned *Report and Order*.<sup>2</sup>

**I. INTRODUCTION AND SUMMARY**

On July 26, 1996, the Commission released its *Report and Order* adopting  
rules to govern the availability of basic 911 services and the implementation of Enhanced

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<sup>1</sup> PrimeCo is a limited partnership comprised of PCSCO Partnership (owned by NYNEX PCS, Inc. and Bell Atlantic Personal Communications, Inc.) and PCS Nucleus, L.P. (owned by AirTouch PCS Holding, Inc. and U S WEST PCS Holdings, Inc.). PrimeCo is licensed or owns a majority ownership interest in the following MTAs: Chicago, Milwaukee, Richmond-Norfolk, Dallas-Ft. Worth, San Antonio, Houston, New Orleans-Baton Rouge, Jacksonville, Tampa-St. Petersburg-Orlando, Miami and Honolulu. Accordingly, PrimeCo is a commercial mobile radio service provider that is directly affected by the *Report and Order* challenged herein.

<sup>2</sup> *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, FCC 96-264, *Report and Order and Further Notice of Proposed Rulemaking* (rel. July 26, 1996) ("*Report and Order*").

911 ("E911") for wireless services. Of particular concern to PrimeCo, the *Report and Order* requires cellular, broadband PCS, and geographic area SMR licensees (jointly "covered carriers") to transmit to a Public Safety Answering Point ("PSAP"), all 911 calls from handsets that transmit a code identification without regard to whether the user is "service initialized." In addition, at the discretion of the PSAPs, covered carriers are obligated to transmit 911 calls from handsets without regard to whether the handsets transmit a code identification. Finally, the *Report and Order* does not prescribe a cost recovery mechanism for E911 implementation.

PrimeCo urges the Commission to reconsider the above aspects of the *Report and Order*. There is no rational basis for the Commission's decision to require carriers to make 911 service available to non-service initialized users. In addition, permitting a carrier's 911 obligations to be determined on a PSAP-by-PSAP basis is administratively cumbersome and will expose carriers to substantial potential liability. Finally, the Commission decision not to prescribe cost recovery for E911 implementation is unwarranted given the significant federal interest and costs involved.

## **II. ARGUMENT**

### **A. Covered Carriers Should Not Be Obligated to Provide 911 Service to Non-Service Initialized Users.**

The *Report and Order* states that covered carriers will be obligated to "forward to PSAPs automatically all 911 calls from handsets that transmit a code identification" without regard to whether the user is service initialized.<sup>3</sup> The Commission

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<sup>3</sup> *Report and Order* at ¶¶ 33-36.

recognizes that this obligation will result in the transmission of 911 calls placed by non-subscribers, but discounts this concern because the authentication and validation procedures necessary to eliminate this problem could “unreasonably delay or prevent 911 calls.”<sup>4</sup>

PrimeCo objects to the requirement that carriers must make 911 service available to non-service initialized users. The Commission’s decision is a significant departure from the Joint Experts Meeting Report and the Consensus Agreement, which do not support requiring carriers to make 911 service available to non-service initialized users. Moreover, the Commission has offered no adequate justification for such departure.

The only rationale proffered by the Commission is an analogy to pay telephones. The Commission argues that pay telephones “are the closest wireline analogy to a wireless handset, in terms of offering a capability of accessing 911 service while the user is away from his or her home or office.”<sup>5</sup> Therefore, according to the Commission, because pay telephones are required to provide free 911 access, it is reasonable to impose the same burden upon covered carriers.<sup>6</sup>

The Commission’s analogy to pay telephones is inapposite. Pay telephones are owned and operated either by local exchange carriers (“LECs”) or competitive pay telephone providers. LECs are public utilities and carriers of last resort, and

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<sup>4</sup> *Id.* at ¶ 36.

<sup>5</sup> *Id.* at ¶ 37. Interestingly, there is no concurrent federal requirement that LECs continue to provide 911 service to individual users if service to those users has been suspended for non-payment.

<sup>6</sup> *Id.*

consequently have substantial legal obligations to provide service to all users in their service areas.

Unlike pay telephones, however, there is no reasonable basis to expect free 911 service from mobile telephones without subscribing to mobile service. The simple purchase of a wireless telephone does not entitle a user to utilize mobile service; an additional step is needed to activate such service. In addition, unlike pay telephones, the entity responsible for maintaining and operating mobile handsets is the individual user. Further, the Commission has determined that commercial mobile radio services ("CMRS") are not equivalent to basic wireline telephone service and that CMRS providers should not be classified as LECs.<sup>7</sup>

PrimeCo submits that the Commission's analogy to pay telephones is flawed and does not support the decision to require carriers to route 911 calls made by non-service initialized users. Moreover, there is no other record evidence supporting the Commission's decision. Accordingly, PrimeCo requests the Commission to reconsider its decision to require carriers to route 911 calls made by non-service initialized users.

**B. PSAP-by-PSAP Routing of 911 Calls Will Expose Covered Carriers to Substantial Potential Liability.**

The *Report and Order* also requires that covered carriers forward all 911 calls from mobile handsets regardless of whether the handset has code identification if a

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<sup>7</sup> *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket Nos. 96-98, 95-185, FCC 96-325, *First Report and Order* ¶ 1004 (rel. August 8, 1996).

PSAP requests to receive such calls.<sup>8</sup> The Commission recognizes that forwarding such calls has significant drawbacks including the fact that “ANI and call back features may not be usable, and hoax and false alarm calls may be facilitated,” but assumes that the PSAP is better positioned to judge whether accepting such calls would help or hinder the provision of emergency service.<sup>9</sup>

In essence, the Commission contemplates that a covered carrier’s obligation to route 911 calls from handsets without code identification will be determined on a PSAP-by-PSAP basis. This result is unduly burdensome on covered carriers. Implementing such a program will be administratively cumbersome and could expose carriers to substantial liability. Accordingly, PrimeCo requests that Commission to reconsider its action.

As the Commission recognizes, “in certain jurisdictions carriers may be providing 911 to several PSAPs from the same switch.”<sup>10</sup> Indeed, these PSAPs may well be in different counties, or even different states. Because of the drawbacks associated with accepting 911 calls from handsets without a code identification,<sup>11</sup> it is reasonable to believe that many PSAPs will choose not to accept such calls. Consequently, 911 service to non-service initialized users may be available in some areas served by a given switch and not available in other areas served by that same switch.

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<sup>8</sup> *Report and Order* at ¶ 39.

<sup>9</sup> *Id.* at ¶ 38.

<sup>10</sup> *Id.* at ¶ 40.

<sup>11</sup> *Id.* at 38.

The *Report and Order*, however, imposes a legal obligation upon carriers to route 911 calls to PSAPs. While that obligation is contingent upon receiving a request from a PSAP, the PSAP has no corresponding legal obligation to accept all calls, and the public has no knowledge that a carrier's 911 obligations are contingent. Thus, it is likely that mobile handset users will develop an expectation of PSAP access to 911, no matter where they are and regardless of whether they are service initialized. Thus, carriers will be exposed to substantial potential liability for a failure to complete a 911 call. Such a result is unacceptable; it is the PSAP, not the carrier, that has the ability to control when and where 911 calls from non-service initialized users will be accepted.

In addition, PrimeCo submits that even if all PSAPs served by a given switch agree to accept 911 calls from non-service initialized users, implementation of such a program will be burdensome, time consuming and expensive. Implementation of such a system will require negotiations by and between the carrier and all PSAPs. As stated earlier, PSAPs served by a given switch may well be located in different jurisdictions and be subject to different standards regarding emergency call systems. Consequently, negotiations and arrangements between carriers and PSAPs are likely to be complex and difficult to resolve.

**C. FCC Must Assure Fundamental Fairness in How Costs for Implementation of E911 Services are Recovered.**

Assuming that the Commission moves forward to implement E911 services, PrimeCo supports the decision to make "implementation of E911 services

contingent upon the adoption of a cost recovery mechanism.”<sup>12</sup> Implementation of E911 services is likely to be difficult and expensive. Carriers will have to spend substantial capital for large infrastructure upgrades and they are entitled to compensation for such expenditures. For this reason, PrimeCo does not agree that cost recovery should be left to the individual states and requests that the Commission reconsider its decision not to “prescribe a particular E911 cost recovery methodology.”<sup>13</sup>

The *Report and Order* demonstrates the substantial federal interest in assuring the timely and effective implementation of E911. Such interests support the exercise of FCC jurisdiction to assure uniform, nationwide standards for E911. PrimeCo submits that such federal interests, and the need for federal intervention similarly justify the adoption of a uniform, nationwide cost recovery mechanism.

Further, any recovery mechanism must be both equitable and timely. Costs for implementing E911 services must be equitably distributed among all entities responsible for that implementation. For example, wireless carriers should not be required to contribute more than their pro rata share toward E911 funding. Similarly, carrier compliance with the terms of the *Report and Order* should be made contingent upon the actual availability of funds for reimbursing the costs of E911 implementation. The simple “adoption of a cost recovery mechanism” condition established in the *Report and Order* is inadequate. Indeed, once a cost recovery mechanism is adopted, there is still no guarantee that money to fund will be appropriated or otherwise made available to carriers on a timely basis.

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<sup>12</sup> *Id.* at ¶ 89.

<sup>13</sup> *Id.*




### III. CONCLUSION

For the foregoing reasons, PrimeCo respectfully requests that the Commission reconsider and revise the *Report and Order* consistent with the discussion above.

Respectfully submitted,

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Date: September 3, 1996

**CERTIFICATE OF SERVICE**

I, Shelia L. Smith, do hereby certify that copies of the foregoing "Petition for Reconsideration of Primeco Personal Communications, L.P." were served this 3rd day of September, 1996 by hand delivery to the following:

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